"Every employee,[2] hereinbefore designated, who is injured, and the dependents of every such employee who is killed, by accident arising out of and in the course of his employment, wheresoever such injury has occurred, unless purposely self-inflicted, shall be entitled to receive, *and shall be paid* such compensation for loss sustained on account of such injury or death, and such medical, nurse and hospital services and medicines, and such amount of funeral expenses, in case of death, as are herein provided." (Emphasis supplied.) Section 56-931 A.C.A. 1939.

The compulsory and mandatory nature of the constitution and implementing statutes has been recognized by this court in positive and unequivocal language:

"* * * This act, so far at least as the employer is concerned, is compulsory in its nature; he has no option as to whether he shall accept or reject it, and the whole language both of the constitutional amendment authorizing it and of the act itself shows clearly that they were based, * * * upon the inherent right of the state, recognized by the Supreme Court of the United States in the cases above cited, by virtue of its police power to establish certain rules regulating the status of employer and employee. We therefore hold that the present Arizona Workmen's Compensation Act is neither elective nor contractual in its nature, but, on the contrary, that it rests upon the police power to regulate the status of employer and employee within the state of Arizona, and that no contract, express or implied, made within or without the state of Arizona, unless expressly so authorized by our law, can of itself affect the rights and duties of such status. It is governed, so far as this subject is

---

[2] It has been assumed by counsel throughout that respondent-employer, American Buslines, Inc., is an employer whose employees are subject to the Workmen's Compensation Act of this state.

"EMPLOYERS SUBJECT TO LAW. — (a) Employers subject to the provisions of this article are: 1. the state, 2. each county, city, town, municipal corporation, and school district, and, 3. every person who has in his employ three (3) or more workmen or operatives regularly employed in the same business or establishment, under contract of hire, except agricultural workers not employed in the use of machinery, and domestic servants; * * *". Section 56-928 A.C.A. 1939, as amended by Laws of 1945, Chapter 33, Section 1.

concerned, solely by the provisions of the Arizona statutes, and nothing else. *The right of Goodson to recover compensation, so far as the Arizona tribunals are concerned, therefore, was governed by the Workmen's Compensation Act of Arizona, and the California statute would apply only in so far as the Arizona statute expressly allowed it to do so.*" (Emphasis supplied.) Ocean Accident and Guarantee Corp. v. Industrial Commission, 32 Ariz. 275, 282, 257 P. 644.

Since, by the explicit language of the constitution, the statute and prior judicial construction, it cannot be denied that petitioner is entitled to compensation in Arizona for the death of her husband, it would seem to follow logically that the Industrial Commission of this state has jurisdiction to award such compensation and it must be awarded unless the state of Arizona or its laws be held subordinated to the state of California or its laws within the territorial borders of Arizona. Such a result is contrary to the public policy of this state and conflicts with accepted judicial construction. The doctrine of comity by which foreign laws are given effect yields to the positive law of the forum where the governmental interest of the forum is superior to the interests of the foreign jurisdiction.

"* * * A rigid and literal enforcement of the full faith and credit clause, without regard to the statute of the forum, would lead to the absurd result that, wherever the conflict arises, the statute of each state must be enforced in the courts of the other, but cannot be in its own. Unless by force of that clause a greater effect is thus to be given to a state statute abroad than the clause permits it to have at home, it is unavoidable that this Court determine for itself the extent to which the statute of one state may qualify or deny rights asserted under the statute of another. [Citing cases.]

"The necessity is not any the less whether the statute and policy of the forum is set up as a defense to a suit brought under the foreign statute or the foreign statute is set up as a defense to a suit or proceeding under the local statute. In either case, the conflict is the same. In each, rights claimed under one statute prevail only by denying effect to the other. In both the conflict is to be resolved, not by giving automatic effect to the full faith

and credit clause, compelling the courts of each state to subordinate its own statutes to those of the other, but by appraising the governmental interests of each jurisdiction, and turning the scale of decision according to their weight.

"The enactment of the present statute of California was within state power and infringes no constitutional provision. Prima facie every state is entitled to enforce in its own courts its own statutes, lawfully enacted. One who challenges that right, because of the force given to a conflicting statute of another state by the full faith and credit clause, assumes the burden of showing, upon some rational basis, that of the conflicting interests involved those of the foreign state are superior to those of the forum. * * *" Alaska Packers Association v. Industrial Accident Commission, 294 U.S. 532, 79 L. Ed. 1044, 55 S. Ct. 518.

And see Buckingham Transp. Co. v. Industrial Commission, 93 Utah 342, 72 P. 2d 1077.

The conflict of laws is to be resolved in favor of the state where the injury occurs:

"* * * Under these circumstances, the governmental policy of California weighs more heavily in the scale of decision than the law of Massachusetts, and the conflict in laws must be resolved in favor of the state where the injury occurred." Pacific Employers Insurance Co. v. Industrial Accident Commission, 10 Cal. 2d 567, 75 P. 2d 1058;

affirmed in the Supreme Court of the United States:

"Full faith and credit does not here enable one state to legislate for the other or to project its laws across state lines so as to preclude the other from prescribing for itself the legal consequences of acts within it." Pacific Employers Insurance Co. v. Industrial Accident Commission, 306 U.S. 493, 83 L. Ed. 940, 59 S. Ct. 629;

and is in accord with the experts in the field of workmen's compensation:

"In short, so long as there are conflicting but real governmental interests in two jurisdictions, the worker ordinarily *has his choice of collection* in either the place of hire or place of injury or place of business localization. This is a valuable right,

as in one state the medical rights might be limited to $400 and his compensation rights to $5,000, whereas in the other, medical bills and compensation might be unlimited and could amount to over $15,000 each. The employee's or dependent's rights, if based upon a real interest, depend on the law of the forum which he voluntarily chooses. The full faith and credit clause of the federal constitution is usually held not to be a bar to the employee's choice or election so long as it is obnoxious to the law of the forum to refuse him the local remedy or to refer him to the other state." Horovitz, Injury and Death under Workmen's Compensation Laws, p. 39.

"* * * The view that, whatever other arrangements it may make about applicability, each state should unreservedly take responsibility for injuries within its borders rests not upon any survival of delictual conflicts rules but on simple statutory construction, on the unavoidable interest of the state in an injury which may affect its own citizens more than those of any other state, and on the desirability of providing a backstop liability to which claimant can turn when he finds himself on the wrong side of all other extraterritorial rules." 2 Larson, Workmen's Compensation, 385, Sec. 87.25.

Not only does the public policy of this state require that a workman be compensated for injuries or that his dependents be compensated in case of his death, but it requires that the compensation be *in the manner and in the amount* as the laws of this state provide. Anything less or different is not only in derogation of and contrary to the avowed general welfare of this sovereignty but denies to an injured employee or his dependents, as the case may be, the equal protection of laws required by the constitution of this state, Article 2, Section 13, and the constitution of the United States.

"The equal protection clauses of the 14th Amendment and the state constitution have for all practical purposes the same effect. They constitute a guaranty that all persons subject to state legislation shall be treated alike under similar circumstances and conditions in the privileges conferred and liabilities imposed." Valley National Bank of Phoenix v. Glover, 62 Ariz. 538, 554, 159 P. 2d 292.

"The equal protection of the laws is 'a pledge of the protection of equal laws.' Yick Wo v. Hopkins, 118 U.S. 356, 369, 30 L. Ed. 220, 226, 6 S. Ct. 1064. Manifestly, the obligation of the State to give the protection of equal laws can be performed only where its laws operate, that is, within its own jurisdiction. It is there that the equality of legal right must be maintained. That obligation is imposed by the Constitution upon the states severally as governmental entities,—each responsible for its own laws establishing the rights and duties of persons within its borders. It is an obligation the burden of which cannot be cast by one State upon another, and no State can be excused from performance by what another State may do or fail to do. That separate responsibility of each state within its own sphere is of the essence of statehood maintained under our dual system. It seems to be implicit in respondents' argument that if other States did not provide courses for legal education, it would nevertheless be the constitutional duty of Missouri when it supplied such courses for white students to make equivalent provision for negroes. But that plain duty would exist because it rested upon the State independently of the action of other States. We find it impossible to conclude that what otherwise would be an unconstitutional discrimination, with respect to the legal right to the enjoyment of opportunities within the State, can be justified by requiring resort to opportunities elsewhere. That resort may mitigate the inconvenience of the discrimination but cannot serve to validate it." Missouri ex rel Gaines v. Canada, 305 U.S. 337, 83 L. Ed. 208, 59 S. Ct. 232.

The consequence of the majority holding in both this and the Watson Bros. case leads to the absurd result, in the language of Alaska Packers Association v. Industrial Accident Commission of California, supra, that the statutes of this state cannot be enforced in this state or in the courts of this state because of an obligation claimed to be incurred under the statutes of the state of California. The people of Arizona acting through their legislature, so long as these decisions stand unreversed, are barred from the exercise of the right inherent in every sovereignty—to pass laws for the internal regulation and government of the state necessary to preserve the public order and promote the general welfare. Workmen

within Arizona engaged in interstate commerce become victims of the whims and vagaries of the various legislatures of the remaining forty-seven states depending upon where the employer procures his insurance. And:

> "* * * As the Pacific Employers case held, the physical presence of the injured man within the state must concern the state. His medical and hospital bills are owed to local residents, who should not be required to go to foreign states for payment; the witnesses to the accident are within the state, and most of the best evidence bearing on the circumstances of the injury; the state's safety laws and standards may be involved; and, as the Alaska Packers case stressed, the mere presence of a disabled and destitute human being within a state's borders is a social problem of concern to that state since the man may become a public charge if not provided for by compensation law." 2 Larson, Workmen's Compensation, 382, Section 87.23.

It therefore appears that the assumption in the Watson Bros. case that Arizona would unduly burden interstate commerce in enforcing its Workmen's Compensation Act by requiring the payment of premiums to the state compensation fund is unsound. That unsoundness has contaminated the opinion in this case leading to the complete denial of petitioner's rights as expressed in the constitution and laws of this state. A decision so unsound in principle and so harsh and unjust in result should be positively and unambiguously reversed.

Now, I have said that it is my opinion that the Watson Bros. case should be reversed but since the principle established is being adhered to as the law of this jurisdiction, a recognition of the limitations of the holding therein will do much to limit the pernicious effect. The Watson Bros. case was an action to restrain the collection of premiums to be paid to the state compensation fund. The premiums sought to be collected were admittedly in an amount sufficient to insure the employees of Watson Bros. Transportation Co. for the hazards of the entire trip both within and without the state. The court did not hold that the extraction of a lesser premium in an amount sufficient to compensate an injured

workman or his dependents for the difference between what the laws of the state of Arizona allowed and the laws of the foreign jurisdiction allowed constituted an undue burden on interstate commerce, and did not hold that an employer was not compelled to otherwise comply with the Workmen's Compensation Act of this state under circumstances where a double premium was not imposed. If these limitations are recognized, this court can give full effect to the statutes of the state of Arizona.

The purpose of both Workmen's Compensation Acts can be fully carried out if an employer doing business in the state of Arizona is required to carry that amount of insurance sufficient to compensate his employees for the difference, if any, between what the foreign state and what the state of Arizona will pay. The employee in the case of his injury or his dependents in case of his death can obtain compensation in the place of his employment and Arizona can pay the difference between the two states, if any. It is now accepted in leading jurisdictions that an award in one state does not bar a further and subsequent award in the second based on the difference in the amounts allowed in the two states, Industrial Commission of Wisconsin v. McCartin, 330 U.S. 622, 91 L. Ed. 1140, 67 S. Ct. 886, 169 A.L.R. 1179; Industrial Indemnity Exchange v. Industrial Accident Commission, 80 Cal. App. 2d 480, 182 P. 2d 309; Cline v. Byrne Doors, Inc., 324 Mich. 540, 37 N.W. 2d 630, 8 A.L.R. 2d 617; Spietz v. Industrial Commission, 251 Wis. 168, 28 N.W. 2d 354; Sorenson v. Standard Construction Co., Inc., 238 Minn. 68, 55 N.W. 2d 630; Cook v. Minneapolis Bridge Construction Co., 231 Minn. 433, 43 N.W. 2d 792; Baduski v. S. Gumpert Co., Inc., 102 N.Y.S. 2d 297, 277 App. Div. 591.

"Award already had under the Workmen's Compensation Act of another state will not bar a proceeding under an applicable Act, unless the Act where the award was made was designed to preclude the recovery of an award under any other Act, but the amount paid on a prior award in another state will be credited on the second award." Restatement of the Law, Conflict of

Laws, 1948 Supplement, Section 403.

By the recognition of this principle an employee regularly employed in Arizona engaged in interstate commerce will be in the position of being assured that the state of Arizona is providing a "backstop" liability to which he may turn in the event he finds himself on the wrong side of extra-territorial rules. This state will have unreservedly taken on its responsibility for injuries which affect the general welfare of the people within the borders of the state and the employees will be compensated, if not in accord with the spirit, at least with the general tenor of the law. This does not shift the burden of employees injured in Arizona to compensation funds of other states for the reason that other states having laws extra-territorial in coverage must have established a rate consistent with the hazards involved. The premium paid in the foreign jurisdiction is presumptively based upon the statutory compensation allowed there and the premium in this jurisdiction need only be that which is necessary to provide compensation for the difference. The payment of the additional premium in Arizona by an employer necessary to compensate for the additional amount allowed is not a double premium for the reason that the employer is not insuring against the same loss in two states.

There is yet another and greater reason why the majority err in denying the Industrial Commission the jurisdiction to enter an award in petitioner's favor under the circumstances of this case. By statute, Section 56-932 A.C.A. 1939, it is provided in part as follows:

> "SECURING COMPENSATION — ALTERNATIVE METHODS — REGULATIONS. — Employers, but not including the state or its legal subdivisions, shall secure compensation to their employees in one of the following ways;
>
> "1. By insuring and keeping insured the payment of such compensation with the state compensation fund;
>
> "2. By insuring and keeping insured the payment of such compensation, with a corporation or association authorized to transact the business of workmen's compensation insurance in the state * * *;

"3. By furnishing to the commission satisfactory proof of financial ability to pay direct the compensation in the amount and manner when due as herein provided. * * *"

The statute gives an employer the choice of three methods to insure that his employees are compensated. He may insure with the state compensation fund, insure with a private insurance carrier or become a self-insurer. He is not compelled to adopt any particular method but is permitted to choose the method which is least burdensome. The choice allowed by the statute removes the claimed undue burden on interstate commerce because it provides a means by which an employer can avoid the payment of a double premium.

By the provisions of sub-section two an employer may select an insurance carrier qualified to do business in both Arizona and California, thereby insuring against the risks occasioned by the employment in both states. While it is undoubtedly true that a private insurance carrier would require the payment of a higher premium to insure against the risks of doing business in Arizona because the statutes of this state afford to the employee greater compensation than do the statutes of the state of California, interstate commerce would not thereby be unduly burdened. It is not every burden which is an undue burden.

"Protection against accidents, as against crime, presents ordinarily a local problem. Regulation to ensure safety is an exercise of the police power. It is primarily a State function, whether the locus be private property or the public highways. Congress has not dealt with the subject. Hence, even where the motorcars are used exclusively in interstate commerce, a State may freely exact registration of the vehicle and an operator's license, (citing cases); may require the appointment of an agent upon whom process can be served in an action arising out of operation of the vehicle within the state, (citing cases); and may require carriers to file contracts providing adequate insurance for the payment of judgments recovered for certain injuries resulting from their operations. (Citing cases.) The State may exclude from the public highways vehicles engaged exclusively

in interstate commerce, if of a size deemed dangerous to the public safety, (citing cases). Safety may require that no additional vehicle be admitted to the highway. The Commerce Clause is not violated by denial of the certificate to the appellant, if upon adequate evidence denial is deemed necessary to promote the public safety. * * *." Bradley v. Public Utilities Commission, 289 U.S. 92, 77 L. Ed. 1053, 53 S. Ct. 577.

Similarly by the provisions of sub-section three an employer as a self-insurer can wholly avoid the payment of any premium.

It should be pointed out again that the holding of the Watson Bros. case was limited to the facts presented in that case, namely, that an attempt was being made to collect a premium for the state compensation fund. That case did not consider the question of whether an interstate employer could disregard completely all the other applicable provisions of the Workmen's Compensation Act of this state. The majority opinion, in denying petitioner an award, permits an employer to escape all responsibility under the Workmen's Compensation Act in doing business in this state and the very evil which was so clearly foreseen by this court shortly after the adoption of the Act has come to pass:

"* * * If we accept the construction placed by petitioner upon the law, it will be entirely possible for large employers of labor to select a state where the benefits of the Compensation Law are extremely small, and by making their contracts of employment in that state, reduce to a great extent the benefits which the public policy of this state has declared should accrue to the injured workman. We do not think a construction making such a thing even possible is one which should be adopted unless it is unavoidable. The rule which we have laid down will make benefits for the injuries of the same kind arising under the same circumstances uniform and certain, and insure that all persons holding the status of employee within this state will be insured the protection of its beneficent laws." Ocean Accident and Guarantee Corp. v. Industrial Commission, supra.

For the foregoing reasons and each of them I dissent.

FRED C. STRUCKMEYER, JR.

Justice

III

Supreme Court
State of Arizona
Phoenix
October 4th, 1955

Messers. Lewis, Roca, Scoville & Beauchamp,
919 T & T Bldg.
Phoenix

Dear Sirs:

Re: No. 5977: Joan Greenway Collins et al vs
American Buslines, and
INDUSTRIAL COMMISSION.

The court today entered its order denying petitioner's motion for a rehearing in this case. Mandate will, therefore, issue forthwith to the Industrial Commission under the opinion rendered June 28th, 1955.

Very truly yours,
EUGENIA DAVIS
Clerk

cc to
Robert K. Park,
Industrial Commission.

CONCLUSION

For the reasons given herein, and in the interests of maintaining the construction of state statutes at the state level in instances where no burden of any nature has been imposed upon the federal authority, it is respectfully submitted that this Court should not concern itself with the subject matter presented and therefore petition for writ of certiorari should be denied.

Respectfully submitted:

JOHN R. FRANKS
Arizona State Office Bldg.
1640 W. Adams Street
Phoenix, Arizona
Attorney for Respondent, The
Industrial Commission of Arizona

December 1955.

No. 523

In the Supreme Court of the United States

OCTOBER TERM, 1955

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLFUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER, THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT, INSURANCE CARRIER.

MEMORANDUM OF OBJECTIONS TO PETITION FOR WRIT OF CERTIORARI.

JOHN R. FRANKS
Arizona State Office Bldg.
1640 W. Adams Street
Phoenix, Arizona
Attorney for Respondent, The
Industrial Commission of Arizona

INDEX

TABLE OF CASES AND AUTHORITIES CITED

Cases:

Statutes:

In the Supreme Court of the United States

JOAN GREENWAY COLLINS, WIDOW, AND CARROLL LEE COLLINS, MINOR CHILD OF ADOLFUS HENRY COLLINS, DECEASED, PETITIONERS,

vs.

AMERICAN BUSLINES, INC., RESPONDENT EMPLOYER, THE INDUSTRIAL COMMISSION OF ARIZONA, RESPONDENT, INSURANCE CARRIER.

MEMORANDUM OF OBJECTIONS TO PETITION FOR WRIT OF CERTIORARI

Petitioner has prayed for the issuance of a writ of certiorari to review the judgment of the Supreme Court of the State of Arizona entered on June 28, 1955, petition for rehearing denied October 4, 1955. Respondent herein, The Industrial Commission of Arizona, objects to the issuance of such writ and submits herewith its Memorandum of Objections:

STATEMENT

Respondent concedes petitioner's statement with reference to entry of opinion below, entry of order denying rehearing, and the accuracy of the appendix material contained in petitioner's brief, pages 11-39, inclusive.

Further, respondent concedes the basic matters alleged in petitioner's statement of the facts.

For the purpose of this presentation, however, we would re-phrase the question presented as follows:

> Whether the workmen's compensation law of the state of the injury *must* be applied to a motor carrier operator in interstate commerce where the claimant is domiciled in, has contracted his hire in, and is fully covered by the compensation laws of, another state.

As to statute and constitutional provisions involved, it is respectfully submitted that in addition to Section 56-928 (a), Arizona Code Annotated 1939 (1952 Supplement), cited by petitioner (petitioner's brief, page 2), the following Arizona statutes embodied in the Arizona Workmen's Compensation Act have a direct applicability to the matter under consideration, as do, in fact, *all* of the statutes of this state constituting the Arizona Workmen's Compensation Act:

> **"Section 56-943. Compensation to workmen hired or injured in or out of state.** If a workman who has been hired or is regularly employed in this state receives a personal injury by accident arising out of and in the course of such employment, he shall be entitled to compensation according to the law of this state even though such injury was received outside of this state. If a workman who has been hired outside of this state is injured while engaged in his employer's business, and is entitled to compensation for such injury under the law of the state where he was hired, he shall be entitled to enforce against his employer his rights in this state if his rights are such that they can reasonably be determined and dealt with by the commission and the courts of this state." (Arizona Code Annotated 1939)

> **"Section 56-965. Employment in interstate commerce.** The provisions of this article shall apply to employers and their employees engaged in intrastate and also in-

terstate and foreign commerce for whom a rule of liability or method of compensation has been or may be established by the United States only to the extent that their mutual connection with intrastate work may and shall be clearly separate and distinguishable from interstate or foreign commerce." (Arizona Code Annotated 1939)

REASONS FOR THE DENIAL OF WRIT

1. The proceedings do not present a federal question open to review here.

At the outset we comment upon the two statutes of the state of Arizona quoted above, Sections 56-943 and 56-965, Arizona Code Annotated 1939. In the instant case, the petitioner, as a claimant before The Industrial Commission of Arizona, did not choose to invoke the jurisdiction of the Commission under Section 56-943, supra. Her claim with the Arizona Commission was a direct claim for benefits under the Arizona Act and payable out of the Arizona State Fund. The existence of said statute, however, is a clear indication of legislative intent on the part of the Arizona legislature to recognize the situation where an employee is hired outside of the state and is covered under the laws of the state where he was hired but who happens to be injured in the state of Arizona. The statutory language gives full recognition to the possible interstate nature of employment and a means is provided for an adjudication of rights in accordance with the laws of the state of workmen's compensation coverage.

Section 56-965, Arizona Code Annotated 1939, supra, gives further indication of the Arizona legislative intent in that the statutory language expresses a definite limitation upon situations arising out of interstate or foreign commerce.

We deem both of the quoted statutes to be an expression of Arizona legislative intent not to impose a burden upon interstate or foreign commerce wherever such imposition can be avoided. These statutes are an integral part of the basic workmen's compensation act construed by the Arizona Court in its opinion below.

The matter presented involves the decision and action of the Supreme Court of the State of Arizona not only in Collins v. American Buslines, Inc., the instant case, but also its decision and action in *Industrial Commission of Arizona v. Watson Brothers' Transportation Co., Inc.*, 75 Ariz. 357, 256 Pac. 2d 730 (1953). In the *Watson Brothers* decision, the Supreme Court of Arizona, in 1953, construed the workmen's compensation laws of the state of Arizona, and by its decision it declined to construe the state's statutes in any manner which would require duplicate premiums of employers who had insured their employees in another state. In the instant case (1955), the same Supreme Court merely reaffirmed its prior interpretation of the state's statutes. This is the simple essence of the situation and it is patent that the matter is not one of federal concern. By its interpretation of the state's statutes, the Supreme Court of the State of Arizona has *not imposed* a burden upon the federal commerce. The choice in this respect certainly lies at the state level, bearing in mind that the state statutes themselves are under consideration.

The opinion of the Court below makes it clear that the Court was dealing with the construction of the Arizona statutes as evidenced by the following language appearing in the decision, cited on page 16 of petitioner's brief:

"* * * We hesitate to construe our workmen's compensation laws in a manner as to exclude employees injured in Arizona unless such construction is clearly required *by the terms of the statute.*" (Emphasis supplied.)

We re-emphasize the fact that in its considerations the Arizona Court had before it the entire Arizona Workmen's Compensation Act and decisions relevant thereto, recognizing, of course, the supremacy of the Constitution of the United States as the supreme law of the land. Nevertheless, the Arizona Court applied the statutes of the state of Arizona, and in so doing, it imposed no burden upon interstate commerce, and the results of its interpretation constitute no infringement upon matters covered by the s u p r e m e law of the land. The Supreme Court of Arizona has merely said that it does not choose to interpret its own statutes to require the payment of duplicate premiums by an employer who has covered his employees in another state. Patently this choice should be left to the state of Arizona.

For the above reasons, we repeat that the real question herein presented is as we have re-phrased it above. In other words, *must* the workmen's compensation laws of Arizona be applied to the employee in interstate commerce where the employee is domiciled in, has contracted for his hire in, and is fully covered by the compensation laws of another state? Or we might ask this question: Will this Court remand and direct that the state law be applied to anyone in interstate commerce who happens to be injured while within the state of Arizona? It is submitted that this latter question answers itself. The basic law of the state of Arizona has been declared in the *Watson Brothers* case,

supra. The declaration is to the effect that duplicate premiums cannot be collected for workmen's compensation insurance coverage. The decision in the instant case has affirmed and applied this basic law. It will thus appear as settled law in the state of Arizona that neither equity nor the statutes of the state require duplicate premiums of employers who might have their employees hired elsewhere and who are covered elsewhere even though working at intervals in the state of Arizona. The position of the Supreme Court of Arizona is made clear by the following language in its decision, cited in petitioner's brief at page 21:

> "* * * We do not decline jurisdiction merely for the reason that decedent was engaged in interstate commerce, but in view of an additional consideration — that he was also covered in another jurisdiction * * *."

In view of the decision of the Supreme Court of the State of Arizona construing the statutes of the state, it would be necessary for petitioner herein to contend that there would be no duplication of premium if there was an apportionment of premium. It is submitted that the Arizona Court in the *Watson Brothers* case, supra, and in its opinion in the instant case, has already construed the state's statutes as being repugnant to an apportionment procedure. It is respectfully submitted that no mandate of this Court or other federal authority could change or review this construction of the state law unless the whole field of workmen's compensation for employees engaged in interstate commerce is preempted by federal legislation.

It is submitted that petitioner's citations of *State Tax Comm. v. Van Cott*, 306 U.S. 511, 514 (1939), and *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437, 443,

(1952), are not in point. In the instant case we have the matter clearly resting in the state's construction of its own statutes with no imposition or infringement upon matters reserved for federal jurisdiction.

2. The question is not substantial. The record contains no accurate information concerning the number of truckers or bus drivers who may be involved with the state of Arizona in interstate commerce. Obviously our inquiry would be limited to that consideration. The fact that other states have chosen to construe their own statutes in a particular manner is of no concern here except that the situation emphasizes the right of the state of Arizona to effect its own individual consideration and application. Nothing unusual is presented by petitioner's illustrations.

3. The decision does not conflict with the applicable holdings of this Court. If the Arizona Court, in its decision below, found comfort in the language of *Southern Pacific Co. v. Arizona*, 325 U.S. 761 (1945), it is of no merit here, bearing in mind that the Arizona Court was still construing its own workmen's compensation law statutes in the opinion below, and by its decision it merely declined to construe the state's statutes as requiring the payment of double premiums in the instant fact situation.

Consideration as to whether or not the double premium actually exists (page 6 of petitioner's brief) is not properly before us here. The premium and rate structure of the Arizona system has been construed by the Arizona Court. Construction properly rests at that level.